

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

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U. S. DEPT. OF JUSTICE

CLARENCE C. GILGUTH, AS ATTORNEY GENERAL OF
THE STATE OF NORTH CAROLINA AND AS
MEMBER OF THE STATE CONSTITUTIONAL CONVENTION
OF THE STATE OF NORTH CAROLINA ET AL. vs.
LATE

THE GREAT FALLS POWER HOUSE COMPANY, INC.
MURLEY AND HARRY BROWN

APPEAL FROM THE DISTRICT COURT TO THE SUPREME COURT
OF THE STATE OF NORTH CAROLINA

FILED NOVEMBER 11, 1905

(35,165)

(25,143)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1915.

No. 860.

CLARENCE C. CALDWELL, AS ATTORNEY GENERAL FOR
THE STATE OF SOUTH DAKOTA AND *EX OFFICIO*
MEMBER OF THE STATE SECURITIES COMMISSION
OF THE STATE OF SOUTH DAKOTA, ET AL., APPEL-
LANTS,

vs.

THE SIOUX FALLS STOCK YARDS COMPANY, WILLIAM
MORLEY, AND HARRY MORLEY.

APPEAL FROM THE DISTRICT COURT OF THE UNITED STATES FOR
THE DISTRICT OF SOUTH DAKOTA.

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1 In the District Court of the United States for the District of South Dakota, Southern Division.

In Equity. No. 26.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,
vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants and Appellants.

Citation on Appeal.

To the Sioux Falls Stock Yards Company, a Corporation; William Morley and Harry Morley, Greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, to be held in the city of Washington, in the District of Columbia, on the 11th day of February, A. D. 1916, Pursuant to an order allowing an appeal filed and entered in the clerk's office of the district court of the United States, for the district of South Dakota, Southern Division, from an order signed, filed and entered on the 19th day of November, 1915, in that certain suit being in equity No. 26 So. Division, wherein you are plaintiffs, and Clarence C. Caldwell, as Attorney General for the

2 State of South Dakota and ex Officio member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota, and Ex-Officio member of the State Securities Commission of the State of South Dakota, Joseph L. Wingfield, as Public Examiner of the State of South Dakota, and Ex-Officio member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, are defendants and appellants, to show cause if any there be, why the order rendered against said appellants, as in said order allowing appeal mentioned, should not be corrected and why justice should not be done to the parties in that behalf.

Witness the Honorable James D. Elliott, United States District Judge for the district of South Dakota, this 13 day of December, 1915, and of the Independence of the United States, the One Hundred and thirty-ninth.

JAS. D. ELLIOTT.

U. S. District Judge for the District of South Dakota.

Due and legal service of the above citation on appeal is hereby admitted and accepted this 30th day of December, 1915.

GAMBLE, WAGNER & DANFORTH,
Attorneys for Plaintiffs.

3 [Endorsed:] #26 S. D. Equity. Filed December 31, 1915. Oliver S. Pendar, Clerk.

4 In the District Court of the United States for the District of South Dakota, Southern Division.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

Be it remembered, that on the 3rd day of November, A. D. 1915, there was filed in the above entitled Court, on behalf of the plaintiffs, a Bill of Complaint; which Bill of Complaint is in words and figures following to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

Bill of Complaint.

Sioux Falls Stock Yards Company, a corporation organized and existing pursuant to the laws of the State of Colorado, and having its principal place of business in the City of Denver in the State of Colorado, and William Morley a resident and citizen

5 of the State of Sioux City in the County of Woodbury and

State of Iowa, and Harry Morley a resident and citizen of the City of Sioux City and State of Iowa, bring this bill of complaint against Clarence C. Caldwell, as Attorney General of the State of South Dakota, and a resident and citizen of Howard in the County of Miner and State of South Dakota, and as a member of the State Securities Commission by virtue of his office as Attorney General of said State, and against Harry O'Brien, as Insurance Commissioner of the State of South Dakota, and a member of the State Securities Commission by virtue of his office as Insurance Commissioner, a resident and citizen of the City of Highmore, in the County of Hyde and State of South Dakota, and against Joseph L. Wingfield, as Public Examiner, of the State of South Dakota, and member of the State Securities Commission by virtue of his office as Public Examiner, and a resident and citizen of Mitchell, County of Davison and State of South Dakota, and Dan E. Hanson, as State's Attorney of the County of Turner of the State of South Dakota, and a resident and citizen of Parker in the County of Turner and State of South Dakota.

1.

And thereupon your complainants complain and say that Clarence C. Caldwell is the Attorney General for the State of South Dakota, and a member of the State Securities Commission by virtue of his office as Attorney General; that Harry O'Brien is Insurance Commissioner of the State of South Dakota, and a member of the State Securities Commission of the State of South Dakota by virtue of his office as Insurance Commissioner, and that Joseph L. Wingfield ⁶ as Public Examiner of the State of South Dakota, and a member of said State Securities Commission by virtue of his office as Public Examiner, and that Dan E. Hanson is States Attorney of the County of Turner of the State of South Dakota.

2.

Your complainants further state that Chapter 275 of the Session Laws of the State of South Dakota for the year 1915 is as follows:

"Chapter 275.

(H. B. 158.)

Relating to the Securities Commission.

An Act Entitled An Act to Prevent Fraud in the Sale and Disposition of Stocks, Bonds or Other Securities Sold or Offered for Sale Within the State of South Dakota, Providing for the Enforcement Thereof, and Creating a State Securities Commission.

Be It Enacted by the Legislature of the State of South Dakota:

Sec. 1. There is hereby created a commission to be known as the State Securities Commission, hereafter referred to as "The Commission," whose duty it shall be to administer and provide for the en-

forcement of all the provisions of this Act. Said commission shall consist of the Public Examiner who shall be president thereof, the Attorney General of the State, and the Commissioner of Insurance all of whom shall be members of said commission during their terms of office and any two shall constitute a quorum. The said commission shall succeed the State Securities Commission, created

7 by Chapter 319, Session Laws of 1913, and as such successor shall receive all of the files, papers and property of said State Securities Commission. All proceedings pending before said State Securities Commission created by said Chapter 319, Session Laws of 1913, shall be continued by the commission created by this Act; all actions, civil and criminal, pending under said Chapter 319, Session Laws of 1913, shall be continued and completed thereunder. Said commission shall have its office in the Capitol, in the City of Pierre, in a room to be furnished and equipped by the state, and all of its records shall be there kept. It shall hold regular monthly meetings on such dates as may be determined by the Commission and may hold special meetings upon the call of the president; it shall keep a complete record of all its meetings, its accounts and the business it transacts, and may prepare all necessary blanks to be used in its proceedings and in the conduct of its business. The commission shall have the power to appoint a Secretary at a salary of eighteen hundred dollars per annum. The person so appointed shall proceed to qualify by subscribing the usual oath of office and by giving a bond to the State of South Dakota in the sum of five thousand dollars, with such surety as The Commission shall approve, conditioned upon the faithful performance of the duties of the office, which bond shall be filed and recorded as now provided by law for state officers. The Secretary when acting for the commission, shall have equal power and authority, subject to the approval of the commission and he shall attend to and perform any and all detail work relative to the commission. The commission shall

8 have power to employ such other and further assistance as may be necessary to carry out the provisions of this Act. Annually on or before the first day of November, the Commission shall prepare and file in the office of the Governor a report containing an accurate review of the work of the Commission for the fiscal year ending June 30th preceding the date of said report and which shall contain a schedule of permits granted, a schedule of applications rejected, a statement of the receipts and disbursements of the Commission and such other material information as relates to the work of the office.

Sec. 2. Every person, corporation, co-partnership, company or association (except those exempt under the provisions of this Act) organized, or which shall hereafter be organized in this state, whether incorporated or unincorporated, which shall either himself, themselves or itself or by or through other- engage in the business of selling or negotiating for the sale of any stocks, bonds, investment contracts or other securities issued by him, them or it within the State of South Dakota, shall be known for the purposes of this Act as a domestic investment company. Every such person, corporation, co-

partnership or association resident of or organized in any other State, territory or government, shall be known for the purposes of this Act as a foreign investment company.

Sec. 3. The provisions of this Act shall not apply to (a) Securities of the United States; or any foreign government or of any State or territory thereof, or of any county, city, township, district or other public taxing subdivision of any State or territory of the United States, or any foreign government. (b) Unsecured commercial paper; (c) Securities of public or quasi public corporations, the issue of which securities are regulated by the South Dakota Railroad Commission or by a public service commission or board of equal authority of any State or territory of the United States or securities senior thereto. (d) Securities of State or National Banks or Trust Companies, or building and loan associations of this State. (e) Securities of any domestic corporation organized without capital stock and not for pecuniary gain, or exclusively for educational, benevolent, charitable or reformatory purposes. (f) Mortgages upon real and personal property situated within this State where the entire mortgage is sold and transferred with the note or notes secured by such mortgages. (g) Increase of stock sold and issued to stockholders, also stock dividends. (h) Securities which are listed in any Standard Manual of information approved by said Commission. (i) Isolated or single transactions; Provided, however, that said Commission shall have the power to call for additional and further information than that contained in such Manuals with reference to any securities listed therein, and may, pending the filing of such information, suspend the sale of such securities, and also suspend, either temporarily or permanently, the sale of any securities listed in such Manuals after a hearing upon notice to the issues of such securities if said commission shall find that the sale of such securities would work a fraud upon the purchasers thereof. All permits granted by the commission created by Chapter 319, Session Laws of 1913, that shall be in full force and effect at this time shall remain in force subject to revocation by the state securities commission for cause, as provided by this Act.

Sec. 4. Before selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever in this state, any stocks, bonds, investments contracts, or other securities of its own issue every investment company domestic or foreign shall file in the office of the Commission a statement showing in full detail the plan upon which it proposes to transact business; a copy of all contracts, stocks, bonds or other instruments which it proposes to make with, or sell to, its contributors or customers, together with a copy of its prospectus, and of the proposed advertisements of its sale of stocks, bonds, investments contracts, or other securities, which statement shall also show the names and location and main office of the investment company; the names and addresses of its officers and an itemized account of its financial condition and the amount of its assets and liabilities, and such other information touching its conditions and affairs as the Commission may require. If such investment company shall be a co-partnership or an unin-

corporated association it shall also file *the* the Commission a copy of its articles of co-partnership or association, and all other papers pertaining to its organization. If it be a corporation organized under the laws of South Dakota, it shall also file with the Commission a copy of its articles of incorporation, constitution and by-laws, and all other papers pertaining to its organization. If it shall be an investment company organized under the laws of any other state, territory or government, incorporated or unincorporated, it shall also file with the Commission a copy of the laws of the State, territory or government under which it exists or is incorporated, and also a copy of its Charter and the certificate of the proper officer of such State showing that it is authorized to transact business therein; and also copies of its constitution and by-laws, and all amendments of any of the above mentioned instruments which have been made, and all other papers pertaining to its organization. Every such investment company, foreign or domestic, shall at the time of filing the above named papers, pay a filing fee of one-tenth of one per cent

- 11 of the gross assets as shown by its financial statement. Provided, however, that such filing fee shall not be more than one hundred dollars, nor less than ten dollars.

Sec. 5. All of the above described papers shall be verified by the oath of a member of the co-partnership or company, if it be a co-partnership or company, and by the oath of a duly authorized officer, if it be a corporation or an unincorporated association. All such papers, however, as are recorded or are on file in any public office shall be further certified by the officer of whose records or archives they form a part, as being correct copies of such records or archives.

Sec. 6. Every foreign investment company before offering for sale any of its stocks, bonds, investment contracts, or other securities in this State shall also file its irrevocable written consent that suits and actions may be commenced against it in the proper court of any county in this State in which a cause of action may arise or in which the plaintiff may reside, by the service of any process or pleading authorized by the laws of this State, on the Public Examiner of the State of South Dakota, said consent stipulating and agreeing that such service of such process or pleading on such Public Examiner shall be taken and held in all courts to be as valid and binding as if due service had been made upon the company itself, and said instrument containing such consent shall be authenticated by the seal of said foreign investment company, and by the acknowledged signature of a member of the co-partnership or company, if it be a co-partnership or company; or by an acknowledged signature of the president and secretary of incorporated or unincorporated association, and shall in such case be accompanied by a duly certified copy of the resolution of the board of directors, trustees or managers of the corporation or association, authorizing the secretary and president to execute the same. In case any process or pleadings

- 12 mentioned in this Act are served upon the Public Examiner of the State of South Dakota, it shall be by duplicate copies, one of which shall be filed in the office of the State Securities Commission and another immediately forwarded by registered mail to

the head office of the person or incorporation against which said process or pleadings are directed.

Sec. 7. Said application shall be heard by the said Commission at the next regular meeting after said application is filed (providing such filing shall precede such monthly meeting by twenty-four hours) or at a special meeting or adjourned meeting of said Commission, but if such application is heard at a special or adjourned meeting of said commission the Secretary shall give such applicant at least two days' notice of such hearing. Said Commission shall have power to adjourn such hearings upon such applications from day to day or from time to time.

Sec. 8. The said Commission shall have power to demand from any investment company seeking to come under the provisions of this Act any further information other than such investment company is required to furnish under the provisions of this Act which shall be necessary to the end that the Commission may be put in possession of all facts and information necessary to qualify it to properly pass upon all questions that may come before it. It may make or have made under its direction a detailed examination of such investment company's property, business and affairs, which examination shall be at the expenses of such investment company. It may cause an appraisal to be made, at the expense of said investment company, of the property of said investment company, including the value of patents, good will, promotion and intangible assets.

13 Sec. 9. It shall be the duty of said Commission to examine the statements and documents filed in its office by any investment company and the reports of any investigation conducted under the direction of said commission and to hear such applicant and it shall have power to examine under oath any person interested or connected with such investment company, and if said commission finds that the proposed plan of business of said investment company, or that its proposed contracts, stocks, bonds, investment contracts or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of said commission work a fraud upon the purchaser, then said commission shall disapprove the sale of such proposed contracts, stocks, bonds or other securities and shall notify such investment company by registered mail of its findings and disapproval, and it shall be unlawful for such company to do any business in the way of selling, offering for sale, taking subscriptions for, or negotiating for the sale in any manner whatever of any such contracts, stocks, bonds, and other securities in this State; and said contracts, stocks, bonds and other securities shall not be sold in this State. If, however, said commission shall not find that the proposed plan of business of said investment company or that its proposed contracts, stocks, bonds or other securities are fraudulent or are of such a nature that the sale of such contracts, stocks, bonds or other securities would in the opinion of said Commission work a fraud upon the purchaser thereof, then it shall approve the sale of such stocks, bonds, contracts or other

securities in the State of South Dakota, and issue its certificate in substantially the following language:

14 "This is to certify that ——— had this date been given permission to sell \$—— of its — within the State of South Dakota.

Dated ———.

In Witness Whereof, I have hereunto affixed the corporate seal of the State Securities Commission.

[SEAL.]

———, *Secretary.*"

Sec. 10. Any person, firm, co-partnership, corporation or association whether domestic or foreign, not the issuer, who shall in this State sell or offer for sale any of the stocks, bonds, investment contracts of other securities issued by any foreign or domestic investment company, except the securities specifically exempted in this Act, or who shall be advertisement or otherwise profess to engage in the business of selling or offering for sale such securities shall be deemed a "dealer" in such securities within the meaning of this Act, and no dealer within the meaning of this Act shall sell or offer for sale any such securities unless and until he shall have filed a list of the same in the office of the State Securities Commission as in this Act provided. The term "dealer" shall not include an owner, nor issuer, of such securities so owned by him when such sale is not made in the course of continued and successive transactions of a similar nature, nor one who is a trust capacity created by law lawfully sells any securities embraced with such trust.

Sec. 11. Any dealer desiring to sell or offer for sale within this state any stocks, bonds, contracts or other securities not exempted under the terms of this Act, shall first register with the State Securities Commission and shall furnish said commission, upon oath, in such form as the commission shall prescribe, the following
15 information, to-wit: the dealer's name, residence and business address, the general character of the securities to be dealt in, the place or places where the business is to be conducted within this State, and where the business in this State is not to be conducted by the dealer in person, then the names and addresses of all the persons in charge thereof. Said dealer shall pay to the Commission a fee of fifty dollars and shall furnish said Commission with such other information in addition to that above specified as said Commission shall deem necessary in order to thoroughly acquaint such Commission with the character of the business of said dealer. All authorized agents of any dealer or investment company shall be registered with the Commission and the name of any agent shall be stricken from the register upon the written request of the dealer or investment company; provided, that no agent shall act as such until he shall have filed with the Commission a signed and acknowledged certificate of registration and acceptance of agency upon forms to be furnished by the Commission; Provided, also, that the Commission shall have authority to reject or cancel the registration and appointment of any person as agent for such cause as may to the Commission appear sufficient. If a dealer shall be a non-resident of the state or a cor-

poration other than a domestic corporation, he shall at the time he registers with the Commission file with the commission a written, duly authenticated, appointment of the Public Examiner of this State as his or its agent in South Dakota upon whom process or pleadings may be served for or on behalf of the dealer, which appointment shall be irrevocable. Upon compliance by such dealer with the provisions of this Act, the said Commission shall issue to such dealer a license under the seal of said Commission and signed by the Secretary thereof, which said license shall be good
 16 until revoked by said Commission for good cause upon notice to such dealer and a hearing duly had.

Sec. 12. In addition to the filing and examination fees herein provided for to be paid by investment companies and dealers, there shall be charged and collected by said commission a fee of three dollars for the registration and authorization of each agent of any such investment company or dealer, *with* which fee and registration shall entitle each agent to act as such until the first day of July, following, unless said authority is sooner revoked by the Commission or the dealer or investment company. Each of such agents shall make a new registration on July first of each year for the renewal of their agency and the Commission shall charge and collect for each such renewal registration, a fee of three dollars. All fees and charges collected by the Commission shall be covered into the State Treasury and credited to the State Securities Commission Fund, which is hereby appropriated to the use of the Commission toward paying the expenses of enforcing this act. The expenses of the Commission shall, however, be limited to the moneys received by it in fees. All expense actually and necessarily incurred by the Commission for salaries and expenses in carrying out the provisions of this act shall be paid by the State Treasurer upon warrants drawn from the State Securities Commission fund by the State auditor upon duly itemized and approved vouchers.

Sec. 13. General accounts of every investment company, domestic or foreign, shall be kept in a business like and intelligent manner and in sufficient detail that said Commission can ascertain at
 17 any time its financial condition and the books of accounts shall at all times during business hours, except on Sundays and legal holidays, be open to stockholders and investors in said company, and the said Commission, or its duly authorized representatives, and all such investment companies shall be subject to examination by said commission or any member thereof, or the clerks, accountants or examiners thereof, at any time said Commission shall deem it advisable, and in the same manner as it — now provided for the examination of state banks, and such investment shall pay a fee for each of such examinations of not to exceed ten dollars for each day or fraction thereof that any member of said Commission, clerk, accountant, or examiner is absent from the Capitol building for the purpose of making such examination and shall also pay the actual traveling and hotel expenses of the person or persons making such examination and the failure or refusal of any investment company

to pay such fees, upon demand of such commission, clerk, accountant, or examiner, while making such examination shall work a forfeiture of the right of such investment company to sell or offer for sale any of its contracts, stocks, bonds or other securities in this State. In case of a preliminary examination of any investment company by said Commission as to whether said company shall be permitted to come under the provisions of this Act, the fee of such examination shall be the same as in this section provided, and in case it shall be made to appear to the Commission from the examination of said investment company after said investment company has been authorized to sell its stocks, bonds, contracts, and securities that the further sale of said stocks, bonds, contracts and securities would work

18 a fraud upon the purchaser, then said commission may make an order revoking the license of said investment company to sell its stocks, bonds, contracts and securities, upon notice duly given and a hearing duly had any may, pending such hearing, suspend the right of said investment company to sell its stocks, bonds, contract and securities.

Sec. 14. It shall be unlawful for any investment company or dealer, or representative thereof, either directly or indirectly to sell or cause to be sold, offer for sale, take subscriptions for, or negotiate for the sale in any manner whatever in this State, any stocks, bonds, investment contracts or other securities (except as expressly exempted herein), unless and until said Commission has approved thereof and issued its certificate in accordance with the provisions of this Act, nor shall it be lawful for any such investment company to transact business on any other plan than that set forth in the statements and papers required to be filed by virtue of the provisions of this Act or the rules of the Commission. It shall be unlawful for any investment company or dealer, or its or his agents, to issue, circulate or deliver any advertisement, pamphlet, circular, prospectus or other document in regard to its stocks, bonds, contracts or other securities in the State of South Dakota differing in any way from the copy filed with said Commission as provided by this Act, nor until the same has been approved by the commission.

Sec. 15. No dealer within the meaning of this Act shall sell or offer for sale within this State any of the stocks, bonds, contracts or other securities of any investment company unless such company shall have fully complied with all the provisions of this Act, nor until said dealer shall have registered with the Commission, under the terms

of this Act; Provided, however, that should any dealer desire 19 to sell or offer for sale within this State the stocks, bonds, contracts or other securities of an investment company, which has not itself, complied with the provisions of this Act said dealer shall make application to the said commission for license as hereinbefore provided for by investment companies and shall pay the same fee required to be paid by said investment company.

Sec. 16. The records of the Securities Commission shall be public records and it shall be the duty of the Commission to preserve such information and to so classify and arrange the same as to facilitate examination by any person affected by matters therein contained,

except that the Commission may, in its discretion, withhold information relating to the private affairs of persons or corporations when in their judgment the same shall not be required for the public welfare, or any information relative to any matter that may be at issue in any court, unless upon an order of court. The Commission may from time to time issue in pamphlet form, or by means of newspaper advertisements or otherwise, any and all information regarding any and all contracts, stocks, bonds or other securities sold or offered for sale within this State which it deems would be of public interest or advantage.

Sec. 17. Nothing in this Act shall be construed to repeal or modify any laws giving the State Banking Department of this State control of and supervision over State Banks, and the business of banking in this State, nor shall any part of this Act be construed to repeal or modify laws giving the Commissioner of Insurance of this State control of and supervision over the business of insurance in this State, and those engaged therein.

Sec. 18. The Commission shall adopt a seal with the words, "State Securities Commission," and such design as the Commission may prescribe, engraved thereon, by which it shall authenticate its proceedings. Copies of all records and papers in the office of the Commission certified by the secretary thereof and authenticated by the Seal of said State Securities Commission shall be received in evidence in all courts equally and with like effect as the originals.

Sec. 19. Any person who shall knowingly and wilfully subscribe to or make or cause to be made any false statement, or false entry in any book of any investment company, or who shall exhibit any false paper with the intention or for the purpose of deceiving any person authorized to examine into the affairs of said investment company or shall make or publish any false statement of the financial condition of said investment company or false statement relating to the contracts, stocks, bonds, or other securities by it issued and offered for sale, shall be deemed guilty of a misdemeanor and shall be punished as hereinafter provided.

Sec. 20. The Commission shall provide for the furnishing to those who may apply therefor, of any information regarding any investment company or its affairs, which is on file in its office, except such as is withheld by the Commission under Section 16 of this Act, said Commission to charge therefor approximately the cost of preparing such information. The members of the Commission shall perform the duties imposed upon them and each of them, by the terms of this Act, without any compensation other than the salaries paid them by the State, but they shall be entitled to receive their actual and necessary expenses incurred when absent from the seat of government on business of the Commission.

Sec. 21. Every investment company, domestic or foreign, shall file during the month of January in each and every year a detailed statement in such form and containing such information as the commission shall require showing its condition at the close of business on the preceding December thirty-first, and shall at the same time pay a filing fee therefor of five dollars,

provided, that in cases where the nature of the business of the corporation makes it advisable in the opinion of the Commission, that the annual statement be made as of a different date than December 31st, the Commission may designate such other dates whereof an annual statement shall be made. Failure of any investment company to file its annual statement within one month after the date specified, or failure to file any special report that may be required by the Commission within thirty days, shall forfeit its permit to sell securities in the state unless an extension of time is granted by the Commission.

Sec. 22. The Supreme Court upon petition of any person aggrieved may review by certiorari any final order of determination of the Commission. The issuance of the writ shall not, however, unless specifically ordered by the Court, operate as a stay of proceedings.

Sec. 23. Any person or persons who shall violate any of the provisions of this Act shall be deemed guilty of a misdemeanor and upon conviction thereof shall be fined not more than one thousand dollars or shall be imprisoned in the county jail for not more than one year, or both such fine and imprisonment in the discretion of the Court.

Sec. 24. Should the courts of this state declare any section or provision of this act unconstitutional or unauthorized or in conflict with any other section or provision of this Act, then such decision shall affect only the section or provision so declared to be unconstitutional or unauthorized and shall not affect any other section or part of this act.

22 Sec. 25. Chapter 319, Sessions Laws of 1913, and all acts or parts of acts in conflict herewith are hereby repealed.
Approved March 15th, 1915.

3.

That said Chapter 275 of the Session Laws of the State of South Dakota for the year 1915 became effective in the State of South Dakota on the 1st day of July, 1915.

4.

That the plaintiff the Sioux Falls Stock Yards Company at and prior to said 1st day of July, 1915, and at all the times hereinafter mentioned was engaged in the business of building and constructing a stock yards, and especially engaged in the business of building and constructing a stock yards in the City of Sioux Falls, County of Minnehaha and State of South Dakota, and now has several acres of pens and yards constructed and built upon land in the City of Sioux Falls, County of Minnehaha, and State of South Dakota, and was also engaged at the times hereinafter mentioned in selling a certain amount of its capital stock for the purpose of raising sufficient capital to complete the construction of its said stock yards in said City of Sioux Falls, Minnehaha County, South Dakota; and that the complainants, William Morley and Harry Morley were

at all of said times also engaged in the business of selling stock and especially engaged in the business of selling the stock of the Sioux Falls Stock Yards Company, and that such sales were being made to various farmers, and other purchasers who wished to buy the stock of the Sioux Falls Stock Yards Company for the purpose of promoting the business of the said Sioux Falls Stock Yards

23 Company, and for the purpose of creating a market for stock in the State of South Dakota, and that the complainant now has invested and had invested at the times hereinafter mentioned, several thousand dollars in said enterprise, and that it is still necessary for the Sioux Falls Stock Yards Company to continue the sale of its capital stock in order to complete and build said stock yards, and that it is necessary that said William Morley and Harry Morley continue the sale of said stock for the purpose of earning their livelihood and for the purpose of assisting the Sioux Falls Stock Yards Company in the promotion of its legitimate enterprise.

5.

That the said Sioux Falls Stock Yards Company, and the said William Morley and Harry Morley, as aforesaid, in the months of July and August, 1915, were so engaged in the sale of the stock to various farmers, and others who wished to purchase in the State of South Dakota, and still desire to sell such stock to such purchasers within the State of South Dakota, and that the said Sioux Falls Stock Yards Company, and the said William Morley and Harry Morley still desire to continue the sale of the valuable securities and stocks of the said Sioux Falls Stock Yards Company for the purpose of promoting a legal and lawful business, and that said business cannot be promoted without the continued sale of stock of said corporation.

6.

That on or about the 19th day of October, 1915, the defendant, Dan E. Hanson, as State's Attorney of the County of Turner and State of South Dakota at the instigation and request of the other defendants, as members of the said State Securities Commission as provided in said Chapter 275 of the Session Laws of the State of South Dakota for the year 1915, caused to be filed in the
24 Circuit Court of the County of Turner in the State of South Dakota six informations against your complainants charging your complainants with violation of the provisions of said Chapter 275 of the Session Laws of the State of South Dakota for the year 1915, copies of which criminal informations are hereunto attached and made a part hereof and Marked Exhibits 1, 2, 3, 4, 5, and 6, and that the defendants and each of them now give out that they intend to prosecute your complainants under said informations in said criminal actions in said Turner County in the State of South Dakota, and have notified counsel for complainants that complainants will be prosecuted at once under said informations, and that complainants will be further prosecuted, and that the prosecution

of complainants will continue so long as complainants sell or offer for sale any stock of the said Sioux Falls Stock Yards Company with the State of South Dakota.

7.

That the effect of said action is to deprive the complainants herein of their rights of property, and without due process of law, and is to deprive the complainants Harry Morley and William Morley from pursuing a lawful business, and depriving them of the opportunity of earning a livelihood and of the right to contract, and does deprive the said Sioux Falls Stock Yards Company of its right to contract, and of its property rights, and does deprive them of further completing and building a stock yards in the City of Sioux Falls, and its effect is to prevent them from raising a sufficient amount of capital to complete its business, and from pursuing a lawful business; that if said defendants are permitted to pursue said prosecutions and further prosecutions, as threatened, 25 that it will deprive the complainants of their property without due process of law, and cause complainants to suffer great and irreparable injury, and that complainants have no plain, speedy and adequate remedy at law.

8.

That this action involves a Federal question in that Chapter 275 of the Session Laws of the State of South Dakota for 1915, is unconstitutional and void, in that it deprives complainants of the right to sell in the State of South Dakota the capital stock of said Sioux Falls Stock Yards Company, and deprives them of their property without due process of law, as required by Section 1 of Art. 14 of the Constitution of the United States, and Sec. 2 of Art. VI of the Constitution of the State of South Dakota; that it denies to the complainants, and each of them, the equal protection of the laws as guaranteed to them under the Fourteenth Amendment to the Federal Constitution; that it imposes a burden and practically amounts to prohibition of Interstate Commerce, contrary to Sec. 8 of Art. 1 of the Constitution of the United States, and that it attempts to vest and delegate to the said so called State Securities Commission judicial powers unauthorized by law.

9.

That the said Sioux Falls Stock Yards Company has complied with the provisions of the laws of the State of South Dakota in regard to foreign corporations, and has been duly authorized by the said state of South Dakota to do business in the State of South Dakota as a foreign corporation.

Wherefore, your complainants pray that defendants and each of them, be restrained from further violating the rights of your com-

26 plainants, and that your Honor grant a writ of injunction perpetually enjoining the said defendants from further prosecuting said criminal actions hereinbefore referred to, and from instituting further criminal actions against your complainants for alleged violation of said unconstitutional law, and from further interfering with the rights of your complainants, and your complainants further pray that a provisional or temporary injunction be issued herein restraining said defendants, and each of them from further prosecuting said action hereinbefore referred to and restraining and enjoining them from further prosecuting your complainants for other alleged violation of said law, and from instituting any further criminal actions under said law, against your complainants; your complainants further pray that a temporary restraining order be issued restraining defendants from prosecuting said criminal action in said Turner County, South Dakota, until the hearing in this matter as to why a temporary injunction should not issue in this matter, and for such other and further relief as the equity of the case may require.

ROBERT J. GAMBLE,
EDWARD E. WAGNER,
GEORGE J. DANFORTH,
Attorneys for Complainants.

STATE OF SOUTH DAKOTA,
County of Minnehaha, ss:

George J. Danforth, being first duly sworn on oath states, that he is one of the attorneys for the complainants in the above entitled action, and that he has read the above and foregoing complaint and knows the contents thereof; that the same is true according
27 to his best knowledge, information and belief, and that the reason this verification is not made by the complainants herein personally, is because the complainants are all non-residents of the State of South Dakota, and are not now in said state of South Dakota where this verification is made; that the plaintiff, the Sioux Falls Stock Yards Company, is a corporation and that none of its officers are within the State of South Dakota, and that there is no one within the State of South Dakota to make this verification in behalf of the complainants herein; that affiant has been duly authorized by the complainants herein to make said verification, and that it is necessary that said verification be made at once in order to restrain and enjoin the prosecution of said criminal actions.

GEORGE J. DANFORTH.

Subscribed and sworn to before me this 29th day of October,
A. D. 1915.

[NOTARIAL SEAL.]

MARIE MONTGOMERY,
Notary Public, South Dakota.

28

EXHIBIT 1.

STATE OF SOUTH DAKOTA,
County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA

vs.

WILLIAM MORLEY.

Information.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as informant, in the name and by the authority of the State of South Dakota, upon his oath presents and charges:

That, William Morley, late of said County, yeoman, on the 6th day of August in the year of our Lord One Thousand Nine Hundred and Fifteen within the County of Turner and State of South Dakota, did act as agent of the Sioux Falls Stock Yards Co., for the sale of stock in the said Sioux Falls Stock Yards Co., without having filed with the State Securities Commission a signed and acknowledged certificate of registration and an acceptance of agency, the said Sioux Falls Stock Yards Co., being then and there a foreign investment company within the meaning of Chapter 275 of the Session Laws of 1915, of South Dakota, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,

States Attorney of the County of Turner, South Dakota.

29

STATE OF SOUTH DAKOTA,
County of Turner, ss:

Dan E. Hanson being duly sworn, upon his oath states that he is the State's Attorney of the County of Turner in the State of South Dakota, that he has read the foregoing information, by him made, as informant, and knows the contents thereof, and that the statements therein made are true to the best of his knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me this 18 day of October, 1915.

[SEAL.]

JOHN J. GERING,

Clerk of Courts.

Witnesses known to State's Attorney at time of filing this information: G. H. Hurd, C. E. Sanborn, J. W. Parsons, Andrew Christensen, Martin Christensen, Harry Levison, Andrew Levison, Fred Peterson.

EXHIBIT 2.

STATE OF SOUTH DAKOTA,

County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA

vs.

HARRY MORLEY.

Information.

Information for Illegal Sale of Capital Stock of Corporation.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as informant, in the name and by the authority of the State of South Dakota, upon his oath presents and charges:

30 That Harry Morley, late of said County, yeoman, on the 30th day of July in the year of our Lord One Thousand Nine Hundred and Fifteen within the County of Turner and State of South Dakota, did then and there knowingly, wilfully and unlawfully offer for sale to one J. W. Parsons a certain quantity of the capital stock of the Sioux Falls Stock Yards Co., that said Sioux Falls Stock Yards Co., was then and there a private corporation and a foreign investment company, within the meaning of Chapter 275 of the Session Laws of South Dakota of 1915; that at said time and place the said Harry Morley was a representative of the said Sioux Falls Stock Yards Co., and offered to sell said stock as such representative; that on said date the said Sioux Falls Stock Yards Company had not made its application to the State Securities Commission of the State of South Dakota and secured the approval of said Commission to such offer to sell such stock and that said Commission had not on said date issued its certificate to the said Sioux Falls Stock Yards Company to sell its capital stock within this state; that said offer of sale of said capital stock made as aforesaid was not an isolated transaction but was part of a general business in this state in which the said defendant was then engaged; contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,

*State's Attorney for the County
of Turner, South Dakota.*

STATE OF SOUTH DAKOTA,

County of Turner, ss:

Dan E. Hanson being duly sworn, upon his oath states that he is the State's Attorney of the County of Turner in the State of

South Dakota, that he has read the foregoing information,
31 by him made, as informant, and knows the contents thereof,
and that the statements therein made are true to the best of
his knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me this 18 day of October, 1915.
[SEAL.]

JOHN J. GERING,
Clerk of Courts.

Witnesses known to State's Attorney at time of filing this information: J. W. Parsons, G. H. Hurd, Andrew Christensen, C. E. Sanborn, Joe Rooth.

EXHIBIT 3.

STATE OF SOUTH DAKOTA,
County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA
vs.
SIOUX FALLS STOCK YARDS COMPANY, a Corporation.

Information.

Information for Illegally Selling Capital Stock.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as informant, in the name and by the authority of the state of South
32 Dakota, upon his oath presents and charges:

That on the 8th day of July, 1915, the above named defendant the Sioux Falls Stock Yards Company was a corporation duly organized and existing under and by virtue of the laws of the state of Colorado, and theretofore and on or about April 14th, 1915, the said corporation had duly filed in the office of the secretary of state of this state a copy of its article of incorporation and had appointed a resident agent within this state, and had caused to be filed and recorded in the office of the secretary of state and in the office of the register of deeds of the county wherein said agent resides and resided, a copy of the appointment of said agent, and by virtue thereof the said corporation became and ever since has been and now is duly and legally authorized to do business in this state; and that said defendant corporation was on said 8th day of July 1915 and prior thereto a foreign investment company within the provisions of chapter 275 of the session laws of 1915; that on or about said 8th day of July 1915 the said Sioux Falls Stock-yards Company, the defendant above named did commit the crime of selling and offering for sale its capital stock within said Turner

County, without a license or certificate of permission from the State Securities Commission of this state, committed as follows: that on or about said 8th day of July 1915, at said Turner County the said defendant the Sioux Falls Stock-yards Company did knowingly, willfully and unlawfully sell and offer for sale ten shares of its capital stock to one Andrew Christianson of said Turner County for the sum of \$100.00 without having the approval or certificate from the State Securities Commission of this state permitting said

33 sale, the said Sioux Falls Stock-yards Company not being exempt by law from procuring the approval or certificate of the said State Securities Commission permitting said sale and which said sale was not an isolated or single transaction, but was one of a series of continued and successive sales of a similar nature, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,

State's Attorney for the County of Turner, South Dakota.

STATE OF SOUTH DAKOTA,

County of Turner, ss:

Dan E. Hanson being duly sworn, upon his oath states that he is the State's Attorney of the County of Turner in the State of South Dakota, that he has read the foregoing information by him made, as informant, and knows *that* contents thereof, and that the statements therein made are true to the best of his knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me this 18 day of October, 1915.

[SEAL.]

JOHN J. GERING,

Clerk of Courts.

Witnesses known to State's Attorney at time of filing this information: Andrew Christianson, Henry Larson, Joe Rooth, Andrew Peirson, J. A. Jensen.

34

EXHIBIT 4.

STATE OF SOUTH DAKOTA,

County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA

vs.

WILLIAM MORLEY.

Information.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as inform-

ant, in the name and by the authority of the State of South Dakota, upon his oath presents and charges:

That, William Morley, late of said County, yeoman, on the 12th day of July in the year of our Lord One Thousand Nine Hundred and Fifteen within the County of Turner and State of South Dakota, did commit the crime of offering for sale capital stock of a foreign corporation contrary to Chapter 275 of Session Laws of 1915 of South Dakota, as follows: That on the 12th day of July, 1915, at Hurley in the County of Turner, State of South Dakota, the said William Morley did knowingly, willfully and unlawfully offer for sale to one C. E. Sanborn a certain quantity of the capital stock of the Sioux Falls Stock Yards Company, to-wit: certain shares of said stock; that said Sioux Falls Stock-yards Company was on said date a private corporation organized and existing within the State of Colorado and a foreign investment company doing business within this state; that in said county of Turner on said 12th day of July, 1915, the said William Morley was a representative of said corporation and offered for sale said stock as such representative; and that on said date the said Sioux Falls Stock-yards

35 Company had nor made its application to the State Securities Commission of this state and secured the approval of said Commission to said sale, and that said commission had not on said date issued its certificate to said Sioux Falls Stock-yards Company authorizing and permitting said company to sell its capital stock within the state of South Dakota; that said sale of capital stock made, offered and negotiated by the said William Morley as aforesaid was not an isolated transaction, but was part of a general business in which the said William Morley was then and there engaged; contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,

State's Attorney of the County of Turner, South Dakota.

STATE OF SOUTH DAKOTA,

County of Turner, ss:

Dan E. Hanson being duly sworn, upon his oath states that he is the State's Attorney of the County of Turner in the State of South Dakota, that he has read the foregoing information, by him made, as informant, and knows the contents thereof, and that the statements therein made are true to his best knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me this 18 day of October, 1915.

[SEAL.]

JOHN J. GERING,

Clerk of Courts.

36 Witnesses known to State's Attorney at time of filing this information: C. E. Sanborn, J. W. Parsons, Martin Christensen, Andrew Levison, Henry Levison, Joe Rooth, Andrew Christenson, Fred Peterson.

EXHIBIT 5.

STATE OF SOUTH DAKOTA,
County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA

vs.

HARRY MORLEY.

Information.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as informant, in the name and by the authority of the State of South Dakota, upon his oath presents a and charges:

That, Harry Morley, late of said County, yeoman, on the 6th day of July in the year of our Lord One Thousand Nine Hundred and Fifteen within the County of Turner and State of South Dakota, did commit the crime of an illegal sale of corporation stock as follows: That the said Harry Morley on the 6th day of July, A. D., 1915, in the County of Turner and State of South Dakota, did then and there knowingly, wilfully and unlawfully offer for sale, sell and negotiate for the sale to one Joe Rooth a certain quantity of the capital stock of the Sioux Falls Stock Yards Company, to-wit: ten shares of said stock that said Sioux Falls Stock Yards Company was on said date a private corporation and a foreign investment company within the meaning of chapter 275 of the Session Laws of

South Dakota of 1915; that at said time and place the said
37 Harry Morley was a representative of said corporation and sold said stock as such representative; and that on said date the said Sioux Falls Stock Yards Company had not made its application to the State Securities Commission of this State and secured the approval of said Commission to said sale, and that said commission had not on said date issued its certificate to said Sioux Falls Stock Yards Company authorizing and permitting said company to sell its capital stock within the State of South Dakota; that said sale of said capital stock made, offered and negotiated by the said Harry Morley as aforesaid was not an isolated transaction, but was part of a general business in which the said Harry Morley was then and there engaged, contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,
*State's Attorney of the County
of Turner, South Dakota.*

STATE OF SOUTH DAKOTA,
County of Turner, ss:

Dan Hanson being duly sworn, upon his oath states that he is the State's Attorney of the County of Turner in the State of South Dakota, that he has read the foregoing information, by him made, as informant, and knows the contents thereof, and that the statements therein made are true to the best of his knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me this 18 day of October, 1915.

JOHN J. GERING,
Clerk of Courts.

38 Witnesses known to State's Attorney at time of filing this information: Joe Rooth, Andrew Christensen, Fred Peterson, Henry Levison, Andrew Levison, J. A. Jensen.

EXHIBIT 6.

STATE OF SOUTH DAKOTA,
County of Turner, ss:

In Circuit Court, First Judicial Circuit, October Term, A. D. 1915.

STATE OF SOUTH DAKOTA

VS.

HARRY MORLEY.

Information.

Information for Illegal Sale of Corporate Stock.

The State's Attorney within and for the County of Turner within the First Judicial Circuit of the State of South Dakota, as informant, in the name and by the authority of the State of South Dakota, upon his oath presents and charges:

That, Harry Morley, late of said County, *yoeman*, on the 6th day of July in the year of our Lord One Thousand Nine Hundred and Fifteen within the County of Turner, *State of South Dakota* and State of South Dakota did knowingly, wilfully and unlawfully sell, offer for sale and negotiate for the sale of to one Joe Rooth a certain quantity of the capital stock of the Sioux Falls Stock Yards Company, to-wit: Ten shares of said stock, that said Sioux Falls Stock Yards Company was on said date a private corporation organized and existing within the state of Colorado for the purpose of owning and operating a packing house and stock-yards within this state; that in said County of Turner on said 6th day of July, 1915, the said Harry Morley was a representative of said corporation, and also a

39 representative of R. A. Brachvogel & Co., a dealer in the securities of said corporation and then and there offered for sale and sold said stock as a representative of said Sioux Falls Stock Yards Company and also of said R. A. Brachvogel & Co., and that on said date neither the said Sioux Falls Stock Yards Company nor the said R. A. Brachvogel & Co. had made its application to the State Securities Commission of this state and secured the approval of said Commission to said sale, and that said Commission had not on said date issued its certificate authorizing and permitting the sale of the capital stock or other securities of said Sioux Falls Stock Yards Company, in this state; that said sale of said capital stock made, offered and negotiated by the said Harry Morley as aforesaid was not an isolated transaction, but was part of a general business in which the said Harry Morley was then and there engaged; contrary to the form of the statutes in such case made and provided and against the peace and dignity of the State of South Dakota.

DAN E. HANSON,

State's Attorney of the County of Turner, South Dakota.

STATE OF SOUTH DAKOTA,

County of Turner, ss:

Dan E. Hanson, being duly sworn, upon his oath states that he is the State's Attorney for the County of Turner in the State of South Dakota, that he has read the foregoing information, by him made, as informant, and knows the contents thereof, and that the statements therein made are true to the best of his knowledge, information and belief.

DAN E. HANSON.

Subscribed and sworn to before me on this 18th day of October, 1915.

[SEAL.]

JOHN J. GERING,
Clerk of Courts.

40 Witnesses known to State's Attorney at time of filing this information: Joe Rooth, Andrew Christensen, Andrew Levison, Henry Levison, J. A. Jensen, Martin Christensen, K. P. Mellgaard, J. D. Wingfield.

(Endorsed:) #753 S. D. District Court United States, District of South Dakota, Southern Division—Sioux Falls Stock Yards Company, a corporation, et al., Plaintiff—vs. Clarence C. Caldwell, as Attorney General, et al., Defendant—Bill of Complaint—Gamble, Wagner & Danforth, Attorneys for Plaintiffs, Sioux Falls, South Dakota—Filed November 3, 1915, Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

“And on the same day there was issued out of the office of the Clerk of said Court a Summons; which said Summons, together with the Marshal's return of service thereon, is in words and figures following, to-wit:

Summons for Relief.

UNITED STATES OF AMERICA,
Southern Division of the District of South Dakota:

In the District Court of the United States for the District of South
Dakota.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM
MORLEY and HARRY MORLEY, Plaintiffs,
against

CLARENCE C. CALDWELL, as Attorney General for the State of South
Dakota and ex Officio Member of the State Securities Commission
of the State of South Dakota; Harry O'Brien, as Insurance Com-
missioner of the State of South Dakota and ex Officio Member of
the — State of South Dakota; Joseph L. Wingfield, as Public Ex-
aminer of the State of South Dakota and ex Officio Member of the
State Securities Commission, and Dan E. Hanson, as State's Attor-
ney of Turner County, South Dakota, Defendants.

Summons.

41 The President of the United States of America to the De-
fendants above named, Greeting:

You are hereby summoned and required to answer the complaint
of the Plaintiffs, in the above entitled action, which is filed in the
office of the Clerk of this Court in Sioux Falls, County of Minnehaha,
and State of South Dakota, and to file your answer to the said com-
plaint in said Clerk's office within thirty days after the service of
this summons upon you, exclusive of the day of such service; and if
you fail to answer the said complaint within the time aforesaid, the
Plaintiff in this action will apply to the Court for the relief de-
manded in the Complaint.

For the Marshal of the District of South Dakota to execute.

Witness: The Hon. James D. Elliott, Judge of the District Court
of the United States of America, this 3rd day of November, A. D.
1915. Issued at my office in the city of Sioux Falls under the seal
of said District Court, the day and year last aforesaid.

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk*,
By C. C. SCHWARZ, *Deputy*.

GAMBLE, WAGNER & DANFORTH,
Plaintiff's Attorneys.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Summons came into
my hands for service on the 11th day of November, A. D. 1915, and
that I served the same; together with the Complaint in said action,

42 on the therein-named defendant, Joseph L. Wingfield, as Public Examiner of the State of South Dakota and Ex-officio member of the State Securities Commission of the State of South Dakota, at 2 miles south of Harrisburg, South Dakota, on November 12, 1915, by handing to and leaving with him certified copies thereof.

Dated at Sioux Falls, South Dakota, this 12th day of November, A. D. 1915.

THOS. W. TAUBMAN,
United States Marshal,
By N. H. JENSEN, *Deputy.*

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Summons came into my hands for service on the 11th day of November, A. D. 1915, and that I served the same; together with the Complaint in said action, on the therein-named defendant, Clarence C. Caldwell, as Attorney General for the State of South Dakota and Ex-Officio member of the State Securities Commission of the State of South Dakota, at Howard, South Dakota, on the 12th day of November, 1915, by handing to and leaving with him certified copies thereof.

Dated at Sioux Falls, South Dakota, this 12th day of November, A. D. 1915.

THOS. W. TAUBMAN,
United States Marshal,
By E. J. ANDERSON, *Deputy.*

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Summons came into my hands for service on the 11th day of November, A. D. 1915, and that I served the same; together with the Complaint in said action, on the therein-named defendant, Harry O'Brien, as

43 Insurance Commissioner of the State of South Dakota and Ex-Officio member of the State Securities Commission of the State of South Dakota, at Pierre, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with M. E. Lockhart, his Clerk, in his office at Pierre, South Dakota, certified copies thereof.

Dated at Sioux Falls, South Dakota, this 16th day of November, A. D. 1915.

THOS. W. TAUBMAN,
United States Marshal.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Summons came into my hands for service on the 12th day of November, A. D.

1915, and that I served the same; together with the Complaint in said action, on the therein named defendant, Dan E. Hanson as State's Attorney of Turner County, South Dakota, at Parker, South Dakota, on the 12th day of November 1915, by handing to and leaving with him certified copies thereof.

THOS. W. TAUBMAN,
United States Marshal,
 By WILLIAM HICKEY, *Deputy.*

(Endorsed:) United States District Court, District of South Dakota, Southern Division—No. 753 S. D.—Sioux Falls Stock Yards Company, a corporation, et al., Plaintiffs, vs. Clarence C. Caldwell, as Attorney General for the State of South Dakota and Ex-Officio member of the State Securities Commission of the State of South Dakota, et al., Defendants. Summons for Relief.—Returned
 44 and filed this 11th day of November, 1915, Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

And, afterwards, to-wit: on November 3, 1915 there was filed in the Office of the Clerk of said Court an Order to Show Cause why a Temporary Injunction should not issue; which order, together with the Marshal's return of service thereon, is in words and figures following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and Ex-officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota, and Ex-officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and Ex-officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

Order.

Upon reading and filing the bill of complaint in the above entitled action, and upon motion of Gamble, Wagner & Danforth, attorneys for the complainants herein, it is ordered that the defendants and each of them show cause before this Court at the Court Room of said Court in the Federal Building in the City of Sioux Falls, Minnehaha County, South Dakota, at such time to be fixed by the presiding Judge of this Circuit, why a temporary injunction should not issue in the above entitled matter as prayed for by the complainants in said action, and it is further ordered that until a hearing upon

45 this order to show cause as to why a temporary injunction should not issue in said matter, that the defendants and each of them be and they hereby are restrained and enjoined from prosecuting the criminal actions mentioned and referred to in complainant's complaint in the County of Turner and State of South Dakota, and that a copy of this order, together with a copy of said bill of complaint in this action be served upon each of said defendants, and Frank M. Byrne, Governor of South Dakota, at least five days before the date of hearing thereof fixed by the Presiding Judge, as aforesaid.

Dated at Sioux Falls, South Dakota, this 29th day of October, A. D. 1915.

By the Court:

JAS. D. ELLIOTT, *Judge.*

Attest:

OLIVER S. PENDAR, *Clerk.*

By C. C. SCHWARZ, *Deputy.*

[SEAL OF COURT.]

UNITED STATES OF AMERICA,
District of South Dakota, sss

I hereby certify and return that the within Restraining Order came into my hands for service on the 11th day of November, A. D. 1915, and that I served the same on the therein-named Joseph L. Wingfield, as Public Examiner of the State of South Dakota and Ex-Officio member of the State Securities Commission of the State of South Dakota, at 2 miles south of Harrisburg, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with him a certified copy thereof.

Dated at Sioux Falls, South Dakota, this 12th day of November, A. D. 1915.

THOS. W. TAUBMAN,

United States Marshal,

46

By N. H. JENSEN, *Deputy.*

Filed November 17, 1915. Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Restraining Order came into my hands for service on the 11th day of November, A. D. 1915, and that I served the same on the therein-named defendant, Clarence C. Caldwell, as Attorney General for the State of South Dakota and Ex-officio member of the State Securities Commission of the State of South Dakota, at Howard, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with him a certified copy thereof.

THOS. W. TAUBMAN,

United States Marshal,

By E. J. ANDERSON, *Deputy.*

Filed November 17, 1915. Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Restraining Order came into my hands for service on the 11th day of November, A. D.

1915, and that I served the same on the therein-named defendant, Harry O'Brien, as Insurance Commissioner of the State of South Dakota and Ex-Officio member of the State Securities Commission of the State of South Dakota, at Pierre, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with M. E. Lockhart, his Clerk in his office at Pierre, South Dakota, a certified copy thereof.

Dated at Sioux Falls, South Dakota, this 16th day of November, A. D. 1915.

THOS. W. TAUBMAN,
United States Marshal.

Filed November 17, 1915. Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Restraining Order came into my hands for service on the 11th day of November, A. D. 1915, and that I served the same on the therein-named Frank M. Byrne, Governor of the State of South Dakota at Pierre, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with him a certified copy thereof.

Dated at Sioux Falls, South Dakota, this 16th day of November, A. D. 1915.

THOS. W. TAUBMAN,
United States Marshal.

Filed November 17, 1915. Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

48 UNITED STATES OF AMERICA,
District of South Dakota, ss:

I hereby certify and return that the within Restraining Order came into my hands for service on the 12th day of November, A. D. 1915, and that I served the same on the therein named defendant, Dan E. Hanson, as State's Attorney of Turner County, South Dakota, at Parker, South Dakota, on the 12th day of November, A. D. 1915, by handing to and leaving with him a certified copy thereof.

THOS. W. TAUBMAN,
United States Marshal,
By WILLIAM HICKEY, *Deputy.*

Filed November 17, 1915. Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

(Endorsed:) #753 S. D.—District Court of the United States, District of South Dakota, Southern Division—Sioux Falls Stock Yards Company, a corporation, et al., Plaintiff vs. Clarence C. Caldwell, as Attorney General, et al., Defendant—Order—Gamble, Wagner & Danforth, Attorneys for Plaintiffs, Sioux Falls, South Dakota—Filed November 3, 1915, Oliver S. Pendar, Clerk, By C. C. Schwarz, Deputy.

49 And on the same day there was filed in the Office of the Clerk of said Court, an Answer of said defendants; which Answer is in words and figures following, to-wit:

UNITED STATES OF AMERICA,
Southern Division of the District of South Dakota:

In the District Court of the United States for the District of South Dakota.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiff,
against

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota, and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

Answer.

The defendants in the above entitled action submit the following in answer to plaintiff's bill of complaint herein:

50 **First.**

Defendants admit all of the allegations in said bill of complaint contained save and except those contained in paragraphs 7 and 8 of said bill of complaint, which paragraphs and each of them, the defendants respectfully deny.

Second.

As a further and affirmative defense these defendants allege upon information and belief that Chapter 275 of the Session Laws of the State of South Dakota of 1915, set out in said bill of complaint, is a valid and subsisting statute of the State of South Dakota and

authorizes and demands of these defendants that they do and perform the various acts against which plaintiffs complain in this action.

Third.

Further answering said bill of complaint defendants allege that plaintiffs have a plain, speedy and adequate remedy at law against the wrongs of which plaintiffs complain in that if the statute of which the plaintiffs complain is unconstitutional as alleged in said complaint, that fact would constitute a legal defense to the prosecutions mentioned in said complaint and could be established as such in the criminal actions mentioned, or in any other actions which might be brought against said plaintiffs.

51

Fourth.

Defendants still further answering said bill of complaint respectfully allege that this court is without jurisdiction to grant an injunction herein for the reason that this is in fact and legal effect a suit against the state of South Dakota, and therefore in violation of the eleventh amendment to the Constitution of the United States.

Fifth.

The defendants still further answering said Bill of Complaint allege that: the plaintiffs herein and each and all of them have appeared in the Circuit Court of Turner County, South Dakota in an action there pending as set out in said bill of complaint, and in said actions there pending against the said William Morley and Harry Morley, have filed demurrers, raising the question as to the constitutionality of the statute that is involved in this action, and in the action against the Sioux Falls Stock Yards Company, that a motion to quash has been filed; that these appearances, the filing of demurrers and the motion to quash, were all before the commencement of this action; the question of the constitutionality of the statute in question was also raised by these plaintiffs at the preliminary hearing in the criminal prosecution above mentioned; that this Court is, therefore, without jurisdiction to enjoin the prosecution of said actions.

Wherefore, defendants pray and hereby move the court that this action be dismissed, with costs against the plaintiffs herein.

CLARENCE C. CALDWELL,

Attorney General of South Dakota,

Attorney for Defendants.

52

STATE OF SOUTH DAKOTA,

County of Miner, ss:

I, Clarence C. Caldwell being first duly sworn on my oath depose and say: that I have read the above and foregoing answer and know the contents thereof and that the same is true except only as to matters stated upon information and belief and as to such matters that I verily believe it to be true; that I am the Attorney

General in and for the State of South Dakota, duly elected, qualified and acting; that I am one of the defendants in this action and that I am duly authorized to make this appearance and verification for and on behalf of each of the others of said defendants.

CLARENCE C. CALDWELL.

Subscribed and sworn to before me this 17th day of November, 1915.

[NOTARIAL SEAL.]

RICHARD E. BALDWIN,

Notary Public.

(Endorsed:.) #753 S. D.—United States of America, District of South Dakota, Southern Division—In District Court—Sioux Falls Stock Yards Co. Plaintiff, vs. Clarence C. Caldwell, et al., Defendants—Answer—Clarence C. Caldwell, Attorney for defendants, Howard, S. D.—Filed November 18, 1915, Oliver S. Pendar, Clerk, By C. C. Schwarz, Deputy.

And on the same day there was filed in the Office of the Clerk of said Court an Order transferring the case to Equity side of Court; which Order is in words and figures following, to-wit:

53 In the District Court of the United States within and for the Southern Division of the District of South Dakota.

Law Docket. No. 753.

SIOUX FALLS STOCK YARDS COMPANY et al., Plaintiffs,
vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio eMnber of the State Securities Commission, et al., Defendants.

On this 18th day of November, A. D., 1915, it having been called to the attention of the Court that a præcipe for summons in the above entitled case was filed on November 3rd, 1915, and signed by the attorneys for the plaintiff herein, directing the Clerk to issue a Summons for Relief, in the above entitled action; and it appearing upon examination of the Bill of Complaint herein, that the same is clearly a suit in equity; and it further appearing that the defendants herein, on November 18th, 1915, filed their Answer to said Bill of Complaint, hence waiving all objections to the form or manner of service, of the process herein;

It is therefore ordered, that the above entitled cause be transferred from the law docket of this Court, to the equity docket thereof, and all further proceedings in said case be had upon the equity side of this Court.

By the Court:

JAS. D. ELLIOTT, *Judge.*

Attest:

[SEAL OF COURT.]

OLIVER S. PENDAR, *Clerk.*

(Endorsed:) #753, S. D.—SIOUX FALLS STOCK YARDS Co., et al. vs. Clarence C. Caldwell, et al.—Order transferring case to Equity side of Court—Filed November 18, 1915, Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

54 And on the same day there was filed in the office of the Clerk of said Court a Motion to Deny Injunction; which Motion is in words and figures following, to-wit:

UNITED STATES OF AMERICA,
Southern Division of the District of South Dakota:

In the District Court of the United States for the District of South Dakota.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs,

vs.

CLARENCE C. CALDWELL, at Attorney General for the State of South Dakota, and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

Come now the above named defendants in response to the order to show cause herein issued on the 29th day of October, A. D. 1915, and upon all of the records and files herein, respectfully ask of this Honorable Court that the temporary injunction prayed for in plaintiff's bill of complaint be not issued and that the temporary restraining order hereinbefore issued by the court be vacated and set aside.

CLARENCE C. CALDWELL,
Attorney General of South Dakota,
Attorney for Defendants.

(Endorsed:) #26 S. D. Equity—United States of America, State of South Dakota, District of South Dakota, Southern Division, In District Court—Sioux Falls Stock Yards Co. et al., plaintiff,
55 vs. Clarence C. Caldwell, et al. Motion to Deny Injunction—Clarence C. Caldwell, Attorney for Defendants, Howard, S. D. Filed November 18, 1915, Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

And on the same day there was filed in the Office of the Clerk of said Court an Interlocutory Injunction; which Injunction is in words and figures following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota, and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants.

On this 18th day of November, A. D. 1915, the case above entitled came on for hearing upon the order to show cause why an interlocutory injunction herein should not issue.

56 Mr. George J. Danforth appeared and argued the matter for the plaintiffs, and Mr. C. C. Caldwell, Attorney General of the State of South Dakota, appeared and argued the questions in controversy for the defendants.

And now, after consideration of the pleadings and the arguments, because, in the opinion of the court, Chapter 275 of the Session Laws of the State of South Dakota for the year 1915, is violative of the constitution of the United States, and his opinion is confirmed by the decisions in Alabama & No. Transportation Co. v. Doyle, 210 Fed. 173, Wm. R. Compton Co. vs. Allen et al., 216 Fed. 537 and Bracey vs. Darst, 218 Fed. 482,

It is hereby ordered, that the defendants, Clarence C. Caldwell, as Attorney General of the State of South Dakota, Harry O'Brien, as Insurance Commissioner of the State of South Dakota, and Ex-officio member of the State Securities Commission of that State, Joseph L. Wingfield, as Public Examiner of the State of South Dakota, and Ex-officio member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, and each of them individually, and each and all of their agents, servants and assistants, and all others to whom knowledge

57 of this order may come, be and they are hereby enjoined from instituting and prosecuting any actions, civil or criminal, against the complainants under the aforesaid act of the Legislature of the State of South Dakota, for alleged violations thereof, and from taking any proceedings for the enforcement of said act, against the complainants, except such proceedings as may be deemed proper by them in the criminal actions already pending against the complainants.

This injunction shall take effect upon the filing of a bond, approved by the Judge of the United States District Court for the

District of South Dakota, to the United States, in the sum of Three Thousand Dollars (\$3000.00) conditioned upon the payment of such costs and damages as may be incurred or suffered by any party who may be found to have been wrongfully enjoined or restrained thereby; such bond to contain a clause providing that any damages sustained thereunder are to be ascertained as the Court shall direct.

And this injunction shall continue until the final decision of this case, or the further order of the Court.

By the Court:

WALTER H. SANBORN,
United States Circuit Judge.
THOS. C. MUNGER,
United States District Judge.
JAS. D. ELLIOTT,
United States District Judge.

Attest:

[SEAL OF COURT.] OLIVER S. PENDAR, *Clerk.*

58 (Endorsed:) #26 S. D. Eq.—United States District Court, District of South Dakota, Southern Division.—Sioux Falls Stock Yards Company, a corporation, et al., Plaintiffs, vs. Clarence C. Caldwell, as Attorney General for the State of South Dakota and Ex-officio member of the State Securities Commission of the State of South Dakota, et al. Defendants.—Order—Filed November 18, 1915, Oliver S. Pendar, Clerk.

And, afterwards, to-wit: on the 13th day of December, A. D., 1915, there was filed in the Office of the Clerk of said Court, an Assignment of Errors; which Assignment of Errors is in words and figures following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division,

In Equity. No. 26.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants and Appellants.

Assignment of Errors.

Now come the defendants and appellants in the above entitled cause and file the following assignment of errors upon which they

will rely upon their prosecution of the appeal in the above entitled cause from the order made by this Honorable Court on the 19th day of November 1915, and defendants say that the court erred therein in the following particulars, to-wit:

59

First.

In holding and deciding that chapter 275 of the session laws of the State of South Dakota for the year 1915 is unconstitutional.

Second.

In denying defendants' motion that a temporary injunction restraining these defendants from enforcing chapter 275 of the session laws of South Dakota of 1915, against these plaintiffs, be not issued and that the temporary restraining order theretofore issued be vacated and set aside.

Third.

In issuing the temporary injunction restraining and enjoining these defendants, their agents, servants and assistants and all others to whom knowledge of the order might come from bringing or causing to be brought any further actions or prosecutions against these plaintiffs for any violations of said chapter 275 of the session laws of South Dakota of 1915.

Fourth.

In deciding and holding that the plaintiffs have no adequate remedy at law.

Fifth.

In holding and deciding that this is not an action against the State of South Dakota contrary to the provisions of the eleventh amendment to the United States Constitution.

60

Wherefore the appellants pray that said order be reversed and that said District Court for the District of South Dakota be ordered to enter an order reversing its decision in the said cause.

Dated this 11th day of December, 1915.

CLARENCE C. CALDWELL,

Attorney General for the State of South Dakota,

Attorney for Defendants and Appellants.

(Endorsed:) #26 S. D. Equity—Sioux Falls Stock Yards Co. et al., vs. Clarence C. Caldwell, et al.—Assignment of Errors—Filed December 13, 1915, Oliver S. Pendar, Clerk.

And on the same day there was filed in the Office of the Clerk of said Court a Petition for and Order Allowing appeal; which Petition and Order are in words and figures following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

In Equity. No. 26.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State Attorney of Turner County, South Dakota, Defendants and Appellants.

Petition for Appeal.

To the Honorable James D. Elliott, District Judge:

The above-named defendants conceiving themselves aggrieved by the order entered on the 19th day of November, 1915, in
61 the above entitled proceeding do hereby appeal from said order to the Supreme Court of the United States and they pray that their appeal may be allowed, that citation be issued as provided by law, and that transcript of the record and proceedings and papers upon which said order was made, duly authenticated be sent to the Supreme Court of the United States under the rules of such court in such cases made and provided.

Dated this 10th day of December, A. D. 1915.

CLARENCE C. CALDWELL,

*Attorney General of South Dakota, Attorney for
Defendants and Appellants, Howard, South Dakota.*

The plaintiffs and appellees having by stipulation filed herein waived the giving of bond on this appeal, the appeal is hereby allowed, no bond to be required.

By the Court:

12/13/15.

JAS. D. ELLIOTT, *Judge.*

Attest:

[SEAL OF COURT.] OLIVER PENDAR, *Clerk.*

(Endorsed:) #26 S. D. Equity—Sioux Falls Stock Yards Company, et al. vs. Clarence C. Caldwell, as Attorney General for the State of South Dakota, and Ex-officio member of the State Securities Commission of the State of South Dakota, et al. Petition for and Order allowing Appeal—Filed December 13, 1915, Oliver S. Pendar, Clerk, by C. C. Schwarz, Deputy.

62 And on the same day there was filed in the office of the Clerk of said Court a Stipulation waiving Bond on Appeal; which Stipulation is in words and figures following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

In Equity. No. 26.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,
vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants and Appellants.

Stipulation.

It is hereby stipulated and agreed by and between the above named plaintiffs and appellees and the above named defendants and appellants through their respective attorneys, that the filing of bond on appeal has been and is hereby waived.

Dated this 10 day of December, 1915.

GAMBLE, WAGNER & DANFORTH,
Attorneys for Plaintiffs and Appellees.
CLARENCE C. CALDWELL,
Attorney for Defendants and Appellants.

(Endorsed:) #26 S. D. Equity—Sioux Falls Stock Yards Company, et al. vs. Clarence C. Caldwell, as Attorney General for the State of South Dakota, and ex-officio member of State Securities Commission of State of South Dakota, et al.—Stipulation waiving Bond on Appeal—Filed December 13, 1915, Oliver S. Pendar, Clerk, By C. C. Schwarz, Deputy.

63 And, on the same day, there was filed in the office of the Clerk of said Court Præcipe for Record; which Præcipe for Record is in words and figures the following, to-wit:

In the District Court of the United States for the District of South Dakota, Southern Division.

SIoux FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,

v.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants and Appellants.

Præcipe for Record.

To the Clerk of the District Court of the United States for the District of South Dakota:

You will incorporate into the transcript on appeal in the above-entitled cause the following portions of the record in said cause:

1. Summons with Marshal's return of service thereof.
2. Bill of complaint.
3. Order to show cause why temporary injunction should not be issued.
4. Answer.
5. Return to order to show cause.
6. Order of injunction.
7. Petition for appeal with order allowing same.
- 64 8. Stipulation waiving bond on appeal.
9. Assignment of errors.
10. Citation on appeal.
11. Præcipe for record on appeal.

Dated at Howard, South Dakota, this 13th day of December, 1915.

CLARENCE C. CALDWELL,

Attorney General for the State of South Dakota,

Attorney for Defendants.

(Endorsed:) United States of America, District of South Dakota, Southern Division—In District Court—Sioux Falls Stock Yards Co. et al. Plaintiff vs. Clarence C. Caldwell et al. Defendants—Præcipe—Clarence C. Caldwell, Attorney for Defendants, Howard, S. D.—Filed December 13, 1915. Oliver S. Pendar, Clerk.

65 In the District Court of the United States for the District of South Dakota, Southern Division.

SIOUX FALLS STOCK YARDS COMPANY, a Corporation; WILLIAM MORLEY and HARRY MORLEY, Plaintiffs and Appellees,

vs.

CLARENCE C. CALDWELL, as Attorney General for the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Harry O'Brien, as Insurance Commissioner of the State of South Dakota and ex Officio Member of the State Securities Commission of the State of South Dakota; Joseph L. Wingfield, as Public Examiner of the State of South Dakota and ex Officio Member of the State Securities Commission, and Dan E. Hanson, as State's Attorney of Turner County, South Dakota, Defendants and Appellants.

Due and legal service of the Petition for Appeal with order allowing same, Assignment of Errors and Praeipe for Records on Appeal, is hereby admitted by receipt of copies of all of said papers, this 30th day of December, 1915.

GAMBLE, WAGNER & DANFORTH,
Attorneys for Plaintiffs.

(Endorsed:) In United States District Court, District of South Dakota, Southern Division—Sioux Falls Stock Yards Co., et al., Plaintiffs, vs. Clarence C. Caldwell, et al., Defendants—Acceptance of service of Petition for Appeal with Order allowing same, Assignment of Errors and Praeipe for Records on Appeal—Filed December 31, 1915, Oliver S. Pendar, Clerk.

66 UNITED STATES OF AMERICA,
Southern Division, District of South Dakota, ss:

I, Oliver S. Pendar, Clerk of the District Court of the United States, in and for the District of South Dakota, do hereby certify and return to the Honorable, the Supreme Court of the United States, that the foregoing, consisting of 65 pages, numbered consecutively from 1 to 65 inclusive, is a true and complete transcript of the records, process, pleadings and injunction as enumerated in the written praeipe of the parties appellant to this cause filed herein, directing the Clerk what parts of the record and papers to be included within such transcript, as fully as the same appears from the original records and files of said Court; and I do further certify and return, that I have annexed to said transcript and included within said paging, the original Citation, together with the admission of service thereof, and in addition thereto a copy of said Praeipe.

In testimony whereof, I have hereunto set my hand and affixed

the seal of said Court, in the said District, this 31 day of December, A. D. 1915.

[Seal U. S. Dist. Court, Dist. of South Dakota.]

OLIVER S. PENDAR, *Clerk.*

[United States internal revenue documentary stamp, series of 1914, 10 cents, canceled 12, 31, '15. O. S. P., cl'k.]

Endorsed on cover: File No. 25,143. South Dakota, D. C. U. S. Term No. 860. Clarence C. Caldwell, as attorney general for the State of South Dakota and ex officio member of the State Securities Commission of the State of South Dakota, et al., appellants, vs. The Sioux Falls Stock Yards Company, William Morley, and Harry Morley. Filed February 21st, 1916. File No. 25,143.